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Brocade Communications Systems, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**IN RE BROCADE COMMUNICATIONS  
SYSTEMS, INC. DERIVATIVE  
LITIGATION**

## This Document Relates to:

## ALL ACTIONS

Case No. C 05-02233 CRB

**STIPULATION AND [PROPOSED]  
ORDER AND ENTRY OF FINAL  
JUDGMENT UNDER FED. R. CIV.  
P. 54(b) RE: DISMISSAL OF  
REMAINING CLAIMS AGAINST  
DEFENDANTS NEAL DEMPSEY  
AND SETH D. NEIMAN AND THEIR  
RESPECTIVE COUNTERCLAIMS  
PURSUANT TO SETTLEMENTS**

**STIPULATION AND PROPOSED ORDER RE: DISMISSAL  
OF CLAIMS AS TO DEMPSEY AND NEIMAN  
CASE NO.: C-05-02233 CRB**

This Stipulation is made by and between plaintiff Brocade Communications Systems, Inc. (“Brocade”), through the Special Litigation Committee of its Board of Directors (the “SLC”), and defendants Neal Dempsey (“Dempsey”) and Seth D. Neiman (“Neiman”).

## **RECITALS**

WHEREAS, beginning in June 2005, certain shareholder derivative actions were commenced in the United States District Court for the Northern District of California asserting a variety of claims arising from Brocade's historical equity options compensation practices and related matters, which actions were assigned to this Court and consolidated as *In re Brocade Communications Systems, Inc. Derivative Litigation*, No. 05-cv-2233-CRB (the "Consolidated Federal Derivative Action");

WHEREAS the SLC, acting on behalf of Brocade, filed a Second Amended Complaint in the Consolidated Federal Derivative Action on August 1, 2008, asserting claims on behalf of Brocade against ten defendants, including Dempsey and Neiman;

WHEREAS, on October 6, 2008, Dempsey and Neiman and the other eight defendants each filed a motion to dismiss the Second Amended Complaint;

WHEREAS, on December 12, 2008, this Court issued an Order, supplemented by an opinion issued January 6, 2009, in which the Court dismissed all claims against Dempsey and Neiman with the exception of the Fifth, Seventh, and Eighth, and Causes of Action alleging various breaches of fiduciary duty;

WHEREAS, on January 23, 2009, Dempsey filed an answer to the Second Amended Complaint and asserted Counterclaims against Brocade for breach of contract (Count I), negligent misrepresentation (Count II), declaratory judgment (Counts III and IV), and specific performance (Counts V and VI);

WHEREAS, on January 23, 2009, Neiman filed an answer to the Second Amended Complaint and asserted Counterclaims against Brocade for breach of contract (Count I), negligent

1 misrepresentation (Count II), declaratory judgment (Count III), and specific performance (Count  
2 IV);

3 WHEREAS Brocade and Dempsey entered into a settlement agreement on May 14, 2009 (the  
4 “Dempsey Settlement Agreement”), and Brocade and Neiman entered into a settlement agreement  
5 on May 18, 2009 (the “Neiman Settlement Agreement”) (collectively, the “Settlement  
6 Agreements”);

7 WHEREAS, on June 25, 2009, Brocade submitted a copy of the Settlement Agreements to  
8 this Court, and filed a motion for approval of these settlements and entry of a Complete Bar Order  
9 barring contribution claims as to each of Dempsey and Neiman;

10 WHEREAS, on July 17, 2009, this Court entered an Order Approving Settlement And Entry  
11 Of Complete Bar Order as to each of Dempsey and Neiman (the “Complete Bar Orders”);

12 WHEREAS the Complete Bar Orders provide that, upon entry of the Complete Bar Orders,  
13 Brocade, Dempsey and Neiman will file a stipulation and proposed order for dismissal with  
14 prejudice of Brocade’s remaining claims against Dempsey and Neiman, and Dempsey’s and  
15 Neiman’s respective Counterclaims against Brocade, in the Consolidated Federal Derivative Action;

16 WHEREAS the Settlement Agreements provide that parties thereto will request the Court to  
17 retain continuing and exclusive jurisdiction to enforce the Complete Bar Orders and the terms of the  
18 Settlement Agreements;

19 WHEREAS Brocade, Dempsey, and Neiman request that the Court enter Final Judgment in  
20 accordance with the Settlement Agreements, the Complete Bar Orders and this [Proposed] Order  
21 pursuant to Federal Rule of Civil Procedure 54(b);

22 WHEREAS Brocade, Dempsey, and Neiman request that the Court retain exclusive  
23 jurisdiction to construe or enforce the terms of the Settlement Agreements, the Complete Bar Orders,  
24 and this [Proposed] Order and Final Judgment under the authority of *Kokkonen v. Guardian Life*  
25 *Insurance Co. of America*, 511 U.S. 375, 381-82 (1994).

26 NOW, THEREFORE, Brocade, Dempsey, and Neiman, through their respective undersigned  
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counsel, hereby stipulate, and the Court now orders, as follows:

1. All remaining claims against Dempsey and Neiman in the Consolidated Federal Derivative Action, *i.e.*, the Fifth, Seventh, and Eighth Causes of Action of the Second Amended Complaint, shall be and hereby are dismissed with prejudice.

2. All Counterclaims against Brocade asserted by Dempsey (*i.e.*, Counts I, II, III, IV, V, and VI) and all Counterclaims against Brocade asserted by Neiman (*i.e.*, Counts I, II, III, and IV) shall be and hereby are dismissed with prejudice.

3. Brocade and Dempsey shall comply with the terms of the Dempsey Settlement Agreement, and Brocade and Neiman shall comply with the terms of the Neiman Settlement Agreement.

4. The Court shall retain exclusive jurisdiction for purposes of construing or enforcing the terms of the Settlement Agreements, the Complete Bar Orders, and this [Proposed] Order.

5. There being no just reason for delay, the Court hereby orders the Clerk to enter Final Judgment under Fed. R. Civ. P. 54(b) as to Dempsey and Neiman in accordance with the Settlement Agreements, the Complete Bar Order, and this [Proposed] Order.

Dated: October 28, 2009

DEWEY & LEBOEUF LLP

By: /s/ Peter E. Root  
Peter E. Root

Attorneys For Plaintiff  
Brocade Communications Systems, Inc.

Dated: October 28, 2009

K&L GATES LLP

By: /s/ Jeffrey L. Bornstein  
Jeffrey L. Bornstein

1 Dated: October 28, 2009  
2

Attorneys For Defendant Neal Dempsey

3 WILMER CUTLER PICKERING HALE &  
4 DORR LLP

5 By: /s/ Jonathan A. Shapiro  
6 Jonathan A. Shapiro

7 Attorneys For Defendant Seth D. Neiman  
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**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Peter E. Root, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order and Entry of Final Judgment Under Fed. R. Civ. P. 54(b) Re: Dismissal of Remaining Claims Against Defendants Neal Dempsey and Seth D. Neiman And Their Counterclaims Pursuant to Settlements. In compliance with General Order 45.X.B, I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 28<sup>th</sup> day of October 2009, at East Palo Alto, California.

/s/ Peter E. Root

## **ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: \_\_\_\_\_

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Charles R. Breyer  
United States District Judge